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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

NO. 71-218

RALPH GROUNDS, HENRY HITCH, ET AL.
(LANDOWNERS)
Petitioners,

vs.

NORTHERN NATURAL GAS COMPANY, ET AL.
(HELEX GROUP)
and
SOCONY MOBIL OIL CO., INC.
(MOBIL OIL CORPORATION substituted),
ET AL. (LESSEE-PRODUCERS)
Respondents.

REPLY BRIEF OF PETITIONERS

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INDEX

Petitioners' Contentions 1

Petition Was Timely Filed 1

TABLE OF CASES

Collins v. Miller, 252 U.S. 364, 64 L.ed. 616 2

Deal v. Cincinnati Board of Education, ____ U.S. ____, 29 L.ed.2d 128 4

Federal Trade Commission v. Minneapolis-Honeywell Regulator Company, 344 U.S. 206, 97 L.ed. 246, 73 S.Ct. 245 4

Hohorst v. Hamburg-American Packet Co., 148 U.S. 262, 37 L.ed. 443, 13 S.Ct. 590 2

Johnson v. Eisentragar, 339 U.S. 763, 94 L.ed. 1255 3

Meagher v. Minnesota Thresher Manufacturing Co., 145 U.S. 608, 36 L.ed. 834, 12 S.Ct. 876 2

Phinney v. Houston Oil Field Material Company, 5 Cir., 252 F.2d 357 3

Pierson v. Ray, 384 U.S. 938, 16 L.ed.2d 537, 86 S.Ct. 1457, 386 U.S. 547, 18 L.ed.2d 288, 87 S.Ct. 1312.. 4

Polara v. Trans World Airlines, Inc., 2 Cir., 284 F.2d 34 3

United States v. Adams, 383 U.S. 39, 15 L.ed.2d 572, 86 S.Ct. 708 .....2, 4, 5

United States v. Crescent Amusement Co., 323 U.S. 173, 89 L.ed. 160, 65 S.Ct. 254 3

United States v. Healy, 376 U.S. 75, 11 L.ed.2d 527, 84 S.Ct. 553 2

Wirtz v. International Harvester Company, 5 Cir., 331 F.2d 462, cert. den. 379 U.S. 845, 13 L.ed.2d 50, 85 S.Ct. 36 3

STATUTES AND OTHER AUTHORITIES

U.S.C. § 1254(1) 1

Rule 4, Federal Rules of Appellate Procedure 2

Stern & Gressman, Supreme Court Practice, 251 (4th ed. 1969) 3

Stern & Gressman, Supreme Court Practice, 312 (4th ed. 1969) 4

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Petitioners' Contentions

Petitioners recognize that lessee-producers are entitled to compensation for production and gathering of the helium content of the helium-bearing natural gas and that the pipeline and helex companies are entitled to compensation for transportation and separation of the helium content of the helium-bearing natural gas.

Petition Was Timely Filed

U.S.C. § 1254(1) authorizes certiorari to the courts of appeals "before or after rendition of judgment or decree."

As construed by this court "judgment" means final judgment.

The filing of a timely petition for rehearing renders the judgment interlocutory and the full time for filing petition for certiorari runs anew from the date of denial of the petition for rehearing. *United States v. Healy,* 376 U.S. 75, 11 L.ed.2d 527, 84 S.Ct. 553; *United States v. Adams,* 383 U.S. 39, 41 f.n. 1, 15 L.ed.2d 572, 574, 86 S.Ct. 708.

"And the rule requires that the judgment to be appealable, should be final not only as to all parties, but as to the whole subject-matter and as to all causes of action involved." *Collins v. Miller,* 252 U.S. 364, 370, 64 L.ed. 616, 618. See also *Hohorst v. Hamburg-American Packet Co.,* 148 U.S. 262, 264, 37 L.ed. 443, 444, 13 S.Ct. 590 and *Meagher v. Minnesota Thresher Manufacturing Co.,* 145 U.S. 608, 611, 36 L.ed. 834, 835, 12 S.Ct. 876.

The two principles of finality above referred to are incorporated in Rule 4, Federal Rules of Appellate Procedure, which reads:

" * * *

"The running of the time for filing a notice of appeal is terminated as to all parties by a timely motion filed in the district court by any party pursuant to the Federal Rules of Civil Procedure hereafter enumerated in this sentence, and the full time for appeal fixed by this subdivision commences to run and is to be computed from the entry of any of the following orders made upon a timely motion under such rules: (1) granting or denying a motion for judgment under Rule 50(b); (2) granting or denying a motion

under Rule 52(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (3) granting or denying a motion under Rule 59 to alter or amend the judgment; (4) denying a motion for a new trial under Rule 59."

The superceded rule 73, Federal Rules of Civil Procedure, did not contain the words "as to all parties," but the cases so held. *Phinney v. Houston Oil Field Material Company,* 5 Cir., 252 F.2d 357; *Polara v. Trans World Airlines, Inc.,* 2 Cir., 284 F.2d 34; *Wirtz v. International Harvester Company,* 5 Cir., 331 F.2d 462, cert. den. 379 U.S. 845, 13 L.ed.2d 50, 85 S.Ct. 36.

In *United States v. Crescent Amusement Co.,* 323 U.S. 173, 177, 89 L.ed. 160, 165, 65 S.Ct. 254, this court entertained an appeal which would have been untimely except for extension of time by reason of post-trial motions of adverse parties and dismissed an earlier appeal as premature.

In *Johnson v. Eisentragar,* 339 U.S. 763, 94 L.ed. 1255, this court granted certiorari upon a petition which would have been untimely except for extension of time by reason of post-trial motions filed by respondents in the Court of Appeals. See Stern & Gressman, Supreme Court Practice, 251 (4th ed. 1969).

In the case at bar timely petitions for rehearing by members of the Helex group were entertained by the court and overruled on May 20, 1971. (A. 186) At that point the judgment became final as to all parties. Landowners

filed their petition for certiorari on August 12, 1971, eighty-three days after the judgment became final. Subsequently and within ninety days after the petitions for rehearing were overruled members of the Helex group filed petitions for certiorari in numbers 71-238 and 71-243.

In *Pierson v. Ray,* 384 U.S. 938, 16 L.ed.2d 537, 86 S.Ct. 1457, 386 U.S. 547, 18 L.ed.2d 288, 87 S.Ct. 1312, judgment was entered in the Court of Appeals on October 25, 1965. Petitioner Pierson obtained an extension until February 24, 1966. Ray sought no extension, but filed a response in opposition and a cross-petition for certiorari on March 25, 1966. The court granted both the petition and the cross-petition for certiorari. See *Deal v. Cincinnati Board of Education,* ____ U.S. ____, 29 L.ed.2d 128, dissenting opinion of Douglas, J.

The court made no explanation. In Stern and Gressman, Supreme Court Practice, 312 (4th ed. 1969) it is said:

> ". . . The most tenable theory for entertaining such an out-of-time cross-petition is that the Court may regard its jurisdiction over the whole case as attaching upon the timely filing of a petition by any party, giving the Court discretion to allow any other party at any time thereafter to file an additional petition involving the same judgment."

In some of the briefs in opposition reliance is placed upon *Federal Trade Commission v. Minneapolis-Honeywell Regulator Company,* 344 U.S. 206, 97 L.ed. 246, 73 S.Ct. 245. In *United States v. Adams,* 383 U.S. 39, 41, 15

L.ed.2d 572, 574, 86 S.Ct. 708, the court distinguished the case "because that case did not involve a timely motion to amend the judgment." The same distinction is present in the case at bar.

Respectfully submitted,

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